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Kennedy Speech Is Shown to Jury In Trial for Libel

Senator Talked in 1968 of Dismay Over War

By M. A. FARBER

The image and voice of Robert F. Kennedy, disillusioned in early 1968 by the course of the Vietnam War, filled the Federal courtroom yesterday that, for 17 weeks, has been the scene of the trial of Gen. William C. Westmoreland's libel suit against CBS.

Jurors and spectators watched and listened intently to a film clip of a February 1968 speech by the 42-year-old Senator in which he said the Tet offensive had "finally shattered the mask of official illusion with which we have concealed our true circumstances, even from ourselves." It was, he said only four months before his death, "a time for truth."

The film was introduced in Federal District Court in Manhattan by CBS to support the testimony of George Crile, the producer of the 1982 documentary that prompted General Westmoreland's \$120 million suit and one of the defendants in it.

The broadcast — "The Uncounted Enemy: A Vietnam Deception" — charged a "conspiracy" by the general's command in 1967 to show progress in the war by understating the size and nature of Communist forces. The effect of this "conscious effort," the documentary said, was to leave President Johnson and American troops "totally unprepared" for the Tet offensive that began on Jan. 30, 1968.

Producer Ends Testimony

Mr. Crile, who completed his second and final appearance on the stand yesterday by testifying about his "state of mind" during the preparation of the documentary, said that Mr. Kennedy's speech was among the materials he reviewed for the program. He told David Boies, the principal lawyer for CBS, that he almost included portions of the speech in the broadcast.

Q. What was the significance, if any, to you of Mr. Kennedy's speech, Mr. Crile?

A. I think he raised a number of questions that have to be considered, and the main one was the question: Who were we fighting if

the estimates that were given were to be believed?

Senator Kennedy, Mr. Crile said, had attempted to add up the figures on enemy strength and losses after the Tet offensive, "and he came up with an irreconcilable result."

"There wasn't any enemy if you accepted those figures," he said. "And that was the exact time when General Westmoreland was asking for an additional 200,000 American troops to come out to Vietnam."

Testified for 11 Days

Including his first appearance as a "hostile witness" called by lawyers for General Westmoreland, Mr. Crile testified for 11 days, the longest of any witness in the trial before Judge Pierre N. Leval. In effect, Mr. Crile was cross-examined during his direct testimony as a "hostile witness."

General Westmoreland, who commanded United States forces in Vietnam from January 1964 to June 1968, was on the stand for nine days. The 70-year old plaintiff contends that CBS defamed him in the program by saying he deliberately misled President Johnson and the Joint Chiefs of Staff about enemy strength in the

months before the Tet offensive.

Yesterday, in one of the brief interim summations allowed by Judge Leval, Mr. Boies challenged Dan M. Burt, General Westmoreland's chief lawyer, to question Mr. Crile about "those parts of the broadcast that are critical of General Westmoreland and ask Mr. Crile whether he believes they are true."

"One of the things you have not heard," Mr. Boies told the jury, "is a specification of whatever the plaintiff believes is false."

After a conference with the lawyers, initiated by Mr. Burt, Judge Leval told the jury Mr. Boies's remarks were "certainly appropriate."

"On the other hand," the judge said, "Mr. Burt is entitled to conduct his case as he sees fit."

Asked One Question

When Mr. Burt chose to put only one question to Mr. Crile yesterday, Mr. Boies, in another interim summation, asked the jury to consider "why it is" that, if General Westmoreland "really believes" there are false statements in the broadcast about him, Mr. Burt did not pursue Mr. Crile further.

Mr. Burt responded with his own interim summation.

"I spent a lot of time asking Mr. Crile why he put in the broadcast what he put in," Mr. Burt said. "We've all been here a long time, and we're not fighting over nothin'."

Mr. Burt pointed to his client a few feet away. "We've got a general over there who spent his life in the military," he said. "Take that broadcast, and you'll have it with you, in context. It said that General Westmoreland

lied to his superiors and caused a lot of damage to a lot of people."

Mr. Burt's only question on cross-examination yesterday was whether Mr. Crile had told CBS executives after the broadcast that the Tet offensive was a "terrific military victory for the United States." The lawyer showed Mr. Crile notes taken by one of those executives during an internal CBS investigation of the documentary in mid-1982.

Mr. Crile acknowledged that he made the remark, but he recalled that "that was only a small portion" of what he had said then, and he observed that it was followed in the notes by an ellipsis.

If you just counted dead bodies, the producer told the jury, the Tet offensive "was a victory for us." But the real test of success, he said, is whether "you break your opponent's will, like the Vietminh did to the French." And, in those terms, he said, the Tet offensive was "a body blow to the nerve center of this country, a colossal defeat for us."

Cites Meeting of 'Wise Men'

On direct examination, Mr. Crile reviewed some of the written materials he had relied on in 1981, including a book about President Johnson and the war — "The Unmaking of a President" — by Herbert Y. Schandler.

Mr. Schandler's book, Mr. Crile pointed out, cites a briefing on the Tet offensive given by the military on March 25, 1968, to a group of Presidential advisers informally called "the wise men." Among the advisers was Arthur Goldberg, then chief United States delegate to the United Nations, and Mr. Schandler quoted him as having said to a general who listed enemy "effectives" at 230,000:

"Well, General, I'm not a great mathematician, but with 80,000 killed, and with a wounded to killed ratio of 3 to 1, or 240,000 wounded, for a total of 320,000, who the hell are we fighting?"

Mr. Crile said he called Mr. Goldberg before the broadcast and verified this statement.

The speech of Senator Kennedy shown to the jury was given on Feb. 8, 1968, a month before he announced his intention to seek the Democratic nomination for President.

Mr. Kennedy said it was past time to re-evaluate American policy in Vietnam. And, while he took issue with the military's assessment of enemy capabilities even before the Tet offensive, he made a point very similar to Mr. Goldberg's.

"I ask," he said, "who is now doing the fighting?"